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EX PARTE OR LATE FILED

February 5, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Ms. Marlene Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

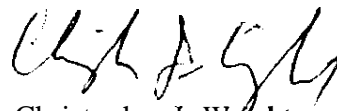
Re: CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

On February 4, 2003, Tom Koutsky of Z-Tel and I met with Jordan Goldstein. We distributed and discussed the attached documents at the meeting. Our discussion focused on the impairment new entrants seeking to serve residential and small business customers would suffer without unbundled access to network elements, particularly switching.

In accordance with FCC rules, a copy of this letter is being filed in the above-captioned dockets.

Sincerely,



Christopher J. Wright
Counsel to Z-Tel Communications, Inc.

FILED FEB 5 2003
LGT/ARL/CFB



The Triennial Review, State Role, and UNE-P

Thomas M. Koutsky

February 4, 2003

CC Dockets Nos. 01-338, 96-98, 98-147



Structuring a Rule

- Legal process
- State role in making “granular” decisions
- Market definition
- Impairment Standard
- Presumptions and Assumptions
- Consequences



Principles

- Respect section 271 checklist requirements
- Non-preemptive (as required by section 251(d)(3))
- Pay attention to incentives
 - BellSouth: “We have incentive to keep them on our network”
 - Admission counsels caution in “transition” gamesmanship
- How will it work in practice (e.g., use restrictions)?
- Order of proof
- Timelines
- Waivers v. Exceptions
- Market Definition: service-specific
 - Demand-side requirements of above groups vary significantly – and, in turn, impact supply-side requirements
 - Cannot confuse alternative sources of supply used for some services as alternatives for others



Presumptions and Assumptions

- Purpose of presumptions?
- To be of value, presumption must capture several *accurate* factors
- “Central office size” presumptions flawed
 - At best, only captures *one* factor (density) which is, incidentally, *not* the most reliable indicator of potential CLEC success
- “Counting switches” also flawed
 - Ignores operational issues w/UNE-L
 - Ignores economic factors, which are *service-specific*
 - What services are switches used for?
 - Are the switches held by bankrupt companies?



Proposed Impairment Framework

1. Begin with market definition – the “service” requesting carrier “seeks to provide”
 - E.g.: analog dialtone services
(Z-Tel Comments Attachment A, or >139MM lines)
 - Consistent with FCC precedent in prior Orders
 - Provides “granularity” *USTA* requests
2. What are the demand-side requirements of “serving” that “market”?
3. What are supply-side requirements of “serving” that “market”?
4. Without unbundled access, can entrant serve as many customers within 2 years as with unbundled access?



Ford Reply Decl. Section III

Impairment exists when a lack of access to an ILEC network element reduces a CLEC's output by a small, but significant, and non-transitory amount

- Complies with *USTA* -- a fact-based analysis
- Requires FCC to consider whether alternatives to element...
 - Are available from other sources in sufficient quantity and quality
 - Can be utilized by entrant in seamless manner
 - Can be implemented without adversely affecting customer service *at service level demanded by consumers for that service*
 - Can be implemented without adversely affecting competitive output
- Flexible enough to consider prices, the “profitability” of particular entry strategies, the “difficulty” of self-provisioning
- “Significant and non-transitory” are objective “limiting principles” grounded in antitrust law
- Allows for state input and assures no significant customer dislocation



The “Analog Mass Market”

1. In BOC Merger Orders, FCC has identified “mass market” for local services that includes residential and small businesses
2. Demand-Side Characteristics of the Mass Market
 - Low revenue per month (\$40-80/line)
 - Highly reliable service (turn up service quickly, repairs <24 hrs, etc.)
 - Regulatory requirements (lifeline, installation/disconnection service requirements)
 - Diffuse consumer base
 - No long-term contracts/month-to-month service
 - High churn (5%-10%/mth)
3. To profitably serve Mass Market, carriers must...
 - Keep costs of customer acquisition low
 - Have reliable, electronic method of service provision
 - Be able to service churn profitably
 - Sell through mass market advertising techniques (ubiquitous coverage with consistent product)



We're Going To Keep Raising the Bar

Today, Z-Tel uses UNE-P to offer ...

Voice Recognition Dialing – launched on February 3rd

Unlimited calling—no more long distance or local calling charges

Immediate cost savings of 15 to 25% off combined bills

Web-based call management

Tomorrow, Z-Tel will use UNE-P for.

Family and community conferencing, directory and message services

Exciting small business services





For More Information...

Thomas M. Koutsky

Vice President, Law and Public Policy

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North County Communications

Do you need co-location space in Tokyo?

North County Communications

We have rack space and shelf space available for colocation (~~co~~location) in our Tokyo data center for companies that need to have a Tokyo presence with excellent telecom connectivity. We have **200** pairs of analog telephone cable and several fiber optic strands from NTT, perfect for INS-Net **1500** (PRI) service.

Please contact jimmy @ nccom.com for more information.
